

Appeal No. VA08/4/004

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 2001**  
**VALUATION ACT, 2001**

**Derek Clarke**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2193110, Supermarket at 23-33/Block E, Unit 1, Mayor Street Upper,  
North Dock B, North Dock, County Borough of Dublin

**B E F O R E**

**John Kerr - Chartered Surveyor**

**Deputy Chairperson**

**Frank O'Donnell - B.Agr.Sc. FIAVI.**

**Member**

**Fiona Gallagher - BL**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 31ST DAY OF MARCH, 2009**

By Notice of Appeal dated the 6th day of October, 2008, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €380.00 on the above-described relevant property.

The grounds of Appeal as set out in the Notice of Appeal are as follows:

"On the basis that the RV as assessed is excessive and inequitable given the actual location and relative value of the premises. The RV is excessive in view of the established tone for comparable property in the area".

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 3<sup>rd</sup> day of February, 2009. The appellant was represented by Mr. Eamonn Halpin, BSc (Surveying), ASCS, ARICS, MIAVI, of Eamonn Halpin & Co. Ltd. The respondent was represented by Mr. Francis Twomey, a District Valuer working in the Valuation Office.

In accordance with the Rules of the Tribunal, the parties had exchanged their respective préces of evidence prior to the commencement of the hearing and submitted same to this Tribunal. At the oral hearing, both parties, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or via cross-examination. From the evidence so tendered, the following emerged as being the facts relevant and material to this appeal.

### **The Property**

The property comprises a ground floor supermarket/convenience store trading under the name and style of Spar, with a retail floor area of 248 sq. metres and ancillary stores area of 88 sq. metres. The overhead floors are laid out in apartments and the adjoining buildings as offices. The subject relevant property enjoys frontage of approximately 25 metres to Castleforbes Road, returning a further 15 metres to a side street. The ancillary area includes kitchen/canteen/office and stores.

### **Tenure**

Leasehold.

### **Services**

Connected to all mains.

### **Valuation History & Relevant Dates**

October, 2007	Revision Officer appointed on foot of request from Dublin City Council to value as necessary.
January, 2008	Property inspected by Revision Officer and RV proposed on this new rating unit at €380.
February, 2008	Without representations made, the Commissioner of Valuation confirmed RV of €380 and issued a Valuation Certificate.

March, 2008	Appellant appeals the valuation through their consultant to the Commissioner of Valuation.
September, 2008	Commissioner of Valuation issues result of the First Appeal with the valuation unchanged at RV €80.
October, 2008	The appellant appeals the Commissioner's decision to the Valuation Tribunal through Eamonn Halpin & Co. Ltd., by Notice of Appeal dated 6 <sup>th</sup> October, 2008.

### **Appellant's Case**

Mr. Halpin took the oath, adopted his précis as his evidence-in-chief, and provided the Tribunal with a review of his submission. He reviewed his précis while emphasising that the area of Castleforbes House is perceived as a moderate commercial location where trade is generated by the presence of a small local residential population and office workers without the benefit of any notable passing trade. He also indicated that the high level of vacancy in new offices and apartments in the area continues to mitigate against retail trading conditions on Castleforbes Road, drawing attention to the cessation of development of many buildings in recent times in the immediate area.

Mr. Halpin argued that the historic tone in this area of Dublin is moderate, as can be deduced by reference to the two comparison properties cited in his précis, namely: Comparison No. 1 being Londis on East Wall Road, with a net annual value (NAV) of €90 per sq. metre applied on the retail area, as determined by the Valuation Tribunal in **VA08/3/014 - Londis**, and Comparison No. 2, a mixed shop, deli and post office at Church Road, East Wall, agreed at First Appeal with a retail area NAV of €4.55 per sq. metre.

Mr. Halpin argued that the rate per sq. metre suggested by the Commissioner of Valuation is excessive, having regard to the actual location of the subject relevant property and its proximity to the new large scale retail development under construction at the Point Village. He argued that the current rateable valuation determined by the Commissioner is inequitable and was incorrect, ignoring the local established "tone-of-the-list". In his direct evidence, Mr. Halpin sought support for a reduction in the applied NAV to levels of €90 per sq. metre and €30 per sq. metre for the shop and ancillary areas respectively, which would result in an RV calculation of €157.24, rounded down by Mr. Halpin to a requested revised RV of €157.00.

Mr. Halpin emphasised that the subject relevant property is located in a secondary/tertiary redevelopment area and, though reasonably proximate to the IFSC, is not considered in valuation or trading terms as comparable to same. He argued that comparative evidence from the surrounding area must be looked to in order to arrive at a fair NAV. He contended that the hypothetical tenant would not perceive strong trading opportunity at the subject's location and hence, the rent he could afford to pay for the property would not be linked to levels established at the IFSC. Continuing, Mr Halpin contended that the same hypothetical tenant would consider and be guided by those two premises trading in the area as outlined in his précis, particularly having regard to the fact that subject is the only retail unit occupied and trading on Castleforbes Road.

In concluding his remarks he drew attention to his belief that, even when fully developed, the location in the context of a requirement to support retail operation will have limited appeal as construction crews complete their tasks, and even if replaced with office workers or residents, the bulk of future convenience shopping will be made at the large scale retail outlet at the Point Village.

#### **Cross-examination by Mr. Twomey**

Under cross-examination, Mr. Halpin replied, as follows:

1. He accepted that the task was to narrow down the issues as to where the "tone-of-the-list" was to be derived from.
2. Comparison No. 2 in his written submission was not located in the Dublin Docklands area but in the centre of a Local Authority area.
3. The function and trading ethos of the subject was similar to that of his Comparison No. 1, but the population density anticipated at the time of negotiation of the rent had failed to materialise in the Castleforbes Road/Mayor Street Areas.
4. His Comparisons No's 1 and 2 shared similar customer profiles, whereas the subject property was designed to service a local residential and office population base which had yet to develop.
5. His Comparison No. 2 was a retail unit trading to an established community and Comparison No. 1, similarly.
6. Only one retail outlet, namely Dunnes Stores, had apparently agreed terms with the developer to set up an anchor store at the nearby Point Village.

**Respondent's Case**

Mr. Twomey took the oath, formally adopted his précis as his evidence-in-chief and reviewed his submission. Having affirmed the location, description and floor areas of the subject, which generally corresponded with those of the appellant, Mr. Twomey outlined his reasoning which resulted in levels of €224 per sq. metre and €68.34 per sq. metre which he applied to the supermarket and ancillary areas respectively, resulting in a total net annual value calculation of €60,573.92, resulting in an RV of €81.62 rounded down to an RV, per the Certificate, of €80.

Addressing his task as to establish the “tone-of-the-list”, the respondent referred to the Mace retail outlet on nearby Mayor Street Lower, with a level of €220 per sq. metre on the retail area. He argued that Mr. Halpin's Comparison Property No. 2, located at East Wall was not to be considered as the NAV on that property was set relative to that local community, and recounted that a similar argument was made by Mr. Halpin at an earlier time in relation to his second Comparison property, Mace, on page 5 of his précis. Mr. Twomey stated that the declared poorly developed or undeveloped condition of Mayor Street Lower, at that time, with consequent very poor trading conditions, was considered and reflected in the level applied of €220 per sq. metre on the supermarket element of the premises.

**Cross-examination by Mr. Halpin**

Mr. Twomey, cross-examined by Mr. Halpin, replied as follows:

1. Mace on Mayor Street Lower, i.e. Comparison No. 2 in his précis, is nearer the IFSC and benefits from business arising from there.
2. Millions of office square feet and numerous apartments are occupied at the IFSC, helping to establish and maintain the local Spar and Mace as the main convenience stores, together with one other outlet near the CHQ Building.
3. Customers would be unlikely to walk from Castleforbes House to the IFSC area for a lunch or a snack.
4. No other retail unit is occupied in Castleforbes House.

### Findings & Conclusions

1. The Tribunal acknowledges the challenges accepted by both parties and efforts made to reach a fair and equitable rateable valuation on the subject premises.
2. The Tribunal, in considering the appellant's Comparison Property No. 1, Londis on East Wall Road, has taken into account both the similarities and differences with the subject in terms of location, market profile and trading opportunity on a day-to-day basis.
3. The Tribunal is satisfied that the population supporting retail services offered at the IFSC is very substantially greater than that serving the subject.
4. The Tribunal considers the Mace outlet on Mayor Street Lower, Comparison No. 2 in the respondent's précis, as closer to the IFSC, and more distant than the subject from Spencer Dock with its restaurants, coffee shops, Marks & Spencer's outlet and significant footfall.
5. The Tribunal is obliged to consider only the evidence submitted and adduced at hearing and as always adopts the principle underlying *rebus sic stantibus*, and consequently does not consider the proposed nearby development works relevant in this circumstances.

Having regard to the arguments adduced at hearing together with the written submissions, the Tribunal is of the view that the rateable valuation should have been calculated as follows:

Supermarket	248 sq. metres @ €16.20 per sq. metre	= €28,817.60
Ancillary areas	88 sq. metres @ €35.00 per sq. metre	= <u>€ 3,080.00</u>
Total NAV		= €31,897.60
RV @ 0.63%		= €200.95
RV Say		€200

And the Tribunal so determines.